

## § 2700.9

day service, the due date for party action in response is extended 5 additional calendar days beyond the date otherwise prescribed, after consideration of paragraph (a) of this section where applicable.

(c) The day from which the designated period begins to run shall not be included in determining the due date. The last day of the prescribed period for action, after consideration of paragraphs (a) and (b) of this section where applicable, shall be included and be the due date, unless it is a Saturday, Sunday, Federal holiday, or other day on which the Commission's offices are not open or the Commission is open but unable to accept filings, in which event the due date shall be the next day which is not one of the aforementioned days.

*Example 1:* A motion is filed with the Commission on Friday, July 1, 2005. Under § 2700.10(d), other parties in the proceeding have 8 days in which to respond to the motion. Because the response period is less than 11 days, intervening weekends and holidays, such as Monday, July 4, 2005, are excluded in determining the due date. A response is thus due by Thursday, July 14, 2005. In addition, those parties not served with the motion on the day it was filed, such as by facsimile or messenger, have 5 additional calendar days in which to respond, or until Tuesday, July 19, 2005.

*Example 2:* A Commission Judge issues his final decision in a case on Friday, July 1, 2005. Under § 2700.70(a), parties have until July 31, 2005, to file with the Commission a petition for discretionary review of the Judge's decision. Even though the decision was mailed, 5 additional calendar days are not added, because paragraph (b) of this section only applies to actions in response to parties' pleadings. However, because July 31, 2005, is a Sunday, the actual due date for the petition is Monday, August 1, 2005.

*Example 3:* Pursuant to § 2700.24(a), the Secretary of Labor files a referral of a citation arising out of a dispute over the content of an operator's emergency response plan. Certain subsequent deadlines in such cases are specifically established by reference to calendar days, and thus paragraph (a) of this section would not necessarily apply in determining due dates. For instance, if the referral was filed on Thursday, January 4, 2007, the short and plain statement the operator must file in response within 5 calendar days would be due Tuesday, January 9, 2007, because the intervening weekend days would not be excluded in determining the due date. If the fifth calendar day were to fall on a

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weekend, holiday, or other day on which the Commission is not open however, the terms of paragraph (c) would apply and the due date would be the next day the Commission is open.

[71 FR 44207, Aug. 4, 2006, as amended at 72 FR 2191, Jan. 18, 2007]

### § 2700.9 Extensions of time.

(a) The time for filing or serving any document may be extended for good cause shown. Filing of a motion requesting an extension of time is effective upon receipt. A motion requesting an extension of time shall be received no later than 3 days prior to the expiration of the time allowed for the filing or serving of the document, and shall comply with § 2700.10. The motion and any statement in opposition shall include proof of service on all parties by a means of delivery no less expeditious than that used for filing the motion, except that if service by facsimile transmission is impossible, the filing party shall serve by a third-party commercial overnight delivery service or by personal delivery.

(b) In exigent circumstances, an extension of time may be granted even though the request was filed after the designated time for filing has expired. In such circumstances, the party requesting the extension must show, in writing, the reasons for the party's failure to make the request before the time prescribed for the filing had expired.

(c) This rule does not apply to petitions for discretionary review filed pursuant to section 113(d)(2)(A)(i) of the Act, 30 U.S.C. 823(d)(2)(A)(i), and § 2700.70(a).

[64 FR 48713, Sept. 8, 1999, as amended at 71 FR 44207, Aug. 4, 2006]

### § 2700.10 Motions.

(a) An application for an order shall be by motion which, unless made during a hearing or a conference, shall be made in writing and shall set forth the relief or order sought.

(b) Written motions shall be set forth in a document separate from other pleadings.

(c) Prior to filing any motion other than a dispositive motion, the moving party shall confer or make reasonable efforts to confer with the other parties

and shall state in the motion if any other party opposes or does not oppose the motion.

(d) A statement in opposition to a written motion may be filed by any party within 8 days after service upon the party. Unless otherwise ordered, oral argument on motions will not be heard. Where circumstances warrant, a motion may be ruled upon prior to the expiration of the time for response; a party adversely affected by the ruling may seek reconsideration.

[58 FR 12164, Mar. 3, 1993, as amended at 64 FR 48713, Sept. 8, 1999; 71 FR 44207, Aug. 4, 2006]

#### § 2700.11 Withdrawal of pleading.

A party may withdraw a pleading at any stage of a proceeding with the approval of the Judge or the Commission.

#### § 2700.12 Consolidation of proceedings.

The Commission and its Judges may at any time, upon their own motion or a party's motion, order the consolidation of proceedings that involve similar issues.

### Subpart B—Contests of Citations and Orders

#### § 2700.20 Notice of contest of a citation or order issued under section 104 of the Act.

(a) *Who may contest.* (1) An operator may contest:

(i) A citation or an order issued under section 104 of the Act, 30 U.S.C. 814;

(ii) A modification of a citation or an order issued under section 104 of the Act; and

(iii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

(2) A miner or representative of miners may contest:

(i) The issuance, modification or termination of any order issued under section 104 of the Act; and

(ii) The reasonableness of the length of time fixed for abatement in a citation or modification thereof issued under section 104 of the Act.

(b) *Time to contest.* Contests filed by an operator pursuant to paragraph (a)(1) of this section shall be filed with

the Secretary at the appropriate Regional Solicitor's Office or at the Solicitor's Office, Mine Safety and Health Division, Arlington, Virginia, within 30 days of receipt by the operator of the contested citation, order, or modification. Contests filed by a miner or representative of miners pursuant to paragraph (a)(2) of this section shall be filed in the same manner within 30 days of receipt by the miner or representative of miners of the contested order, modification, or termination.

(c) *Notification by the Secretary.* The Secretary, in accordance with section 105(d) of the Act, 30 U.S.C. 815(d), shall immediately advise the Commission of such notice of contest upon its receipt.

(d) *Copy to Commission.* The contesting party shall also file a copy of his notice of contest with the Commission at the time he files with the Secretary.

(e) *Contents of notice of contest.* (1) A notice of contest shall contain a short and plain statement of:

(i) The party's position with respect to each issue of law and fact that the party contends is pertinent; and

(ii) The relief requested by the party.

(2) A legible copy of the contested citation or order shall be attached to the notice of contest. If a legible copy is not available, the notice of contest shall set forth the text of the contested citation or order.

(f) *Answer.* Within 20 days after service of a notice of contest, the Secretary shall file an answer responding to each allegation of the notice of contest.

#### § 2700.21 Effect of filing notice of contest of citation or order.

(a) The filing of a notice of contest of a citation or order issued under section 104 of the Act, 30 U.S.C. 814, does not constitute a challenge to a proposed penalty assessment that may subsequently be issued by the Secretary under section 105(a) of the Act, 30 U.S.C. 815(a), which is based on that citation or order. A challenge to such a proposed penalty assessment must be filed as a separate notice of contest of the proposed penalty assessment. See § 2700.26.

(b) An operator's failure to file a notice of contest of a citation or order issued under section 104 of the Act, 30